

SPECIAL CIVIL APPLICATION No 6477 of 1999

Hon'ble MR.JUSTICE A.R.DAVE

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SAFIMIYA MIRANMIYA MALEK

Versus

STATE OF GUJARAT

Appearance:

MR DILIP B RANA for Petitioner

MR GOHIL A.G.P. for Respondent No. 1, 3

MR AJ PATEL for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

Rule. Service of rule is waived by learned
advocate Shri A.J. Patel for respondent No. 2 and

learned A.G.P. Mr. Gohil for respondents Nos. 1 and 3. With consent of the learned advocates, the matter is finally heard today.

2. The petitioner has challenged validity of an order dated 31.7.99 passed by the Addl. Chief Secretary (Appeals), Revenue Department, Govt. of Gujarat whereby the order passed by the Collector dated 17.7.97 was upheld. The Collector had permitted respondent No. 2 to use the land in question for non-agricultural purposes.

3. Ld. Advocate Shri Dilip Rana appearing for the petitioner has submitted that the land in question belonged to his grandfather and by an order dated 24.10.96 in Tenancy Case No. 65/96, the Mamlatdar and ALT had wrongly declared respondent No.2 as permanent tenant in respect of the land in question. It has been submitted by Shri Rana that as the petitioner has a right in respect of the land in question, the Collector ought not to have granted permission to use the land in question for non-agricultural purposes to respondent No. 2.

4. Upon perusal of the paper-book, it appears that the order of the Mamlatdar dated 24.10.96 passed in Tenancy Case No. 65/96 has already been challenged by the present petitioner before the Deputy Collector (Tenancy Appeals), Dist. Anand, in Tenancy Appeal No. 64/98 which is pending.

5. In view of the above facts, it is clear that respondent No. 2 has been declared as a permanent tenant in respect of the land in question. The order whereby respondent No.2 has been declared as a permanent tenant has not been still set aside. Till that order is quashed and set aside, respondent No.2 has a right to use the land in question and if he gives an application for using the land in question for non-agricultural purposes, it is open to the government authorities to pass an appropriate order after considering the facts of the case.

6. Looking to the facts of the case, it appear that till Tenancy Appeal No. 64/98 is finally decided by the Deputy Collector in favour of the present petitioner, the petitioner cannot have any right to challenge validity of the order dated 31.7.99 passed by the Addl. Chief Secretary (Appeals) which has been impugned in the present proceedings. It has been submitted by the learned advocates appearing for the petitioner as well as for respondent No. 2 that it would be appropriate if the said appeal is disposed of at an early date. Looking to

the facts and circumstances of the case, it would be just and proper if the said appeal which is pending before the Deputy Collector is disposed of as soon as possible and preferably before 31.5.2000. It has been submitted by learned A.G.P. Shri Gohil appearing for the Collector, Anand, i.e. respondent No. 3 that necessary intimation shall be sent to the Deputy Collector for disposal of the said appeal referred to hereinabove on or before 31st May 2000. Needless to say that the said appeal will be disposed of after hearing the learned advocates and after considering the merits of the matter and without being influenced by any other proceedings which might be pending before any other authority.

7. In view of the above direction given to the Deputy Collector, learned advocate Shri Rana does not press this petition and the petition is disposed of as withdrawn. Rule is discharged.

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